

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6231 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

HEIRS OF MAFATBHAI P BHOI

Versus

PATEL PIYUSHBHAI SOMABHAI

Appearance:

1. Special Civil Application No. 6231 of 1992
MR AJ PATEL for Petitioner No. 1-6
MR JITENDRA M PATEL for Respondent No. 1,3-7,9
RULE SERVED for Respondent No. 2,8

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 21/02/2003

ORAL JUDGEMENT

The petitioners, in this petition, have challenged the order passed by the Gujarat Revenue Tribunal on 31-3-1992 in Revision Application No. TEN.B.A. 421 of 1991 confirming the order passed by the Deputy Collector, Land Reforms (Appeal), Kheda, who in

turn had confirmed the order passed by the Mamlatdar and Agricultural Land Tribunal, Anand on 20th July 1983 in Tenancy Case No. 485/6/82. The petitioners have made the prayer for quashing and setting aside of all these 3 orders.

2. It is the case of the petitioners that the petitioners have made an application under Section 32PP of the Bombay Agricultural Lands & Tenancy Act (hereinafter referred to as "the Act") before the Mamlatdar and ALT, Anand, in respect of the land bearing Survey No. 99/4, admeasuring about 1 Acre and 17 Gunthas of Village-Karamsar, Taluka-Anand, District-Kaira. The said application was registered as the Tenancy Case No. 482/C/82. The petitioners have, inter alia, contended in the said application that deceased Mathurbhai Dhulabhai Bhoi, their predecessor-in-title, was cultivating the said land on 1-4-1957 and that the petitioners were the heirs and legal representatives of the deceased Mathurbhai, and that compulsory purchase under Section 32G of the Act had become ineffective and that possession of the land in dispute was not taken from the tenant lawfully by the landlord and, therefore, the application under Section 32PP of the Act was required to be granted. It was further contended by the petitioners that in the said proceedings before the Mamlatdar and ALT, the respondents had appeared and contended that the possession of the land in dispute was taken from the tenant by virtue of the order passed by the competent authority and as such the land in dispute was lawfully disposed of and therefore application under Section 32PP was not maintainable at all. The learned Mamlatdar & ALT, Anand by his judgment and order dated 20th July 1983 dismissed the said application.

3. Being aggrieved by the said order and judgment dated 20th July 1983, the petitioners preferred Tenancy Application No. 167 of 1990 before the Deputy Collector, Land Reforms, Kaira who by his judgment and order dated 20th March 1991 dismissed the said appeal, on the grounds stated therein.

4. Being further aggrieved by the said order and judgment dated 20th March 1991 passed by the Deputy Collector, the petitioners preferred Revision Application No. TEN.B.A. 421/1991 before the Gujarat Revenue Tribunal and the Tribunal vide its judgment and order dated 31.3.92 dismissed the said revision application for the reasons stated therein.

5. The petitioners, being aggrieved by the said

order and judgment of the Tribunal dated 31.3.92, have preferred the present petition before this Court and contended that the authorities below have failed to appreciate the impact of Section 32PP of the Act on the facts of the present case and therefore they have committed an error apparent on the face of the orders which was required to be corrected by this Court. It was further contended that the land in dispute was not disposed of in accordance with law and therefore the provisions of Section 32PP of the Act were squarely applicable to the facts of the present case. It was further contended that the predecessor-in-title was the lawful tenant of the land in dispute and the sale had become ineffective and as such the land was never disposed of in accordance with law and therefore the application filed by the petitioners before the Mamlatdar & ALT under Section 32PP of the Act was maintainable. It was further contended that the disposal of land in accordance with law has a special connotation and requirements and as such the same are required to be scrupulously followed in order to exclude the operations of Section 32PP of the Act. The petitioners have also relied on the decision of this Court in the case of Rampuri Kalupuri Swami & Another v. Nathalal Ishwarbhai Hargovanbhai Shah - 17 GLR 81, wherein it is held as under:

"The whole scheme of 1973 Amendment is to give this right to purchase to the tenant who had remained in actual possession, notwithstanding that there had been some order under sec. 32P or an attempt to dispossess him by taking only paper possession. The whole test created by the legislature in this explanation is that the land is not deemed to be disposed of till actual possession is taken under the lawful direction issued under sec. 32P(2) by the person entitled in accordance with law. Therefore, if dispossession was not in accordance with law, by ignoring of fetter of sub-clause (5), either because of retrospectivity created by the supplementary fiction in sub-secs. (1B) and 1(D) of sec. 32PP which restored the rights without any hiatus, or because the said mandate was violated by any further action purporting to give actual possession after the person entitled had actually applied under sec. 32PP or 32PPP within the extended period during the pendency of such application, or for any other reason, if the actual possession had continued with the tenant,

the second condition by resorting to this explanation would be deemed to be fulfilled, notwithstanding the passing of the order under sec. 32P(2), and the application under sec. 32PP would be maintainable. (Para 9)".

6. The petition was admitted by this Court on 1.3.1994 and ad-interim relief in terms of Para 8B of the petition was granted. The said ad-interim relief remains in force till this date. On the Rule being served, the respondent appeared before this Court and filed a detailed affidavit along with all necessary enclosures on 28th June 1994. At the outset, it was contended that the petition was not maintainable and it deserved to be dismissed on the ground that all the three Courts have concurrently held that the petitioners' application under Section 32PP of the Act was not maintainable and he was not entitled to get the land under the said Section. The said findings of facts were duly arrived at by the Mamlatdar as original authority, Collector as the appellate authority, and the Gujarat Revenue Tribunal as the revisional authority and since there being concurrent findings of facts arrived at by three different authorities, this Court while exercising extraordinary writ jurisdiction under Section 227 of the Constitution should not interfere with the said findings.

7. Apart from the above legal contention raised by the respondent, it was further submitted that in the present case the original-tenant was one Mathurbhai Dhulabhai on the relevant date and Maniben Somabhai, and Piyushbhai Manibhaibin Parsottam were coowners of all the ancestral properties including the land in question. It was further submitted that the proceedings under Section 32G were initiated by the Mamlatdar and ALT in the year 1962 and in the said proceedings, the tenant Mathurbhai Dhulabhai had deposed on oath on 17.11.62 that he was cultivating the land as tenant for the last more than 12 years and he has got another vighas of land. He was therefore not in a position to cultivate the land in dispute as tenant and he has shown his unwillingness to purchase the said land. In the said proceedings the landlady Maniben was also examined and after considering the evidence on record, Mamlatdar by his order dated 17.11.62 declared the purchase ineffective as the tenant was not willing to purchase the said land.

8. It was further contended that after the above order of the Mamlatdar, the land was at the disposal of the Collector under Section 32P of the Act and the Collector had initiated the proceedings under the said

provisions to dispose of the land finally. The respondent landlady in the said proceedings had appeared and submitted that she wanted the land for personal cultivation as she had only 3 vighas of land. The tenant was also examined and he has stated that he was willing to hand over the possession as he has got another 14 vighas of land. After having considered the evidence on record, the Mamlatdar acting as Collector passed the order under Section 32P of the Act granting the land to the original-landlady for personal cultivation and he has by his said order terminated the tenancy of the tenant and directed the Talati to take necessary action.

9. After the aforesaid direction was given to the Talati by the Mamlatdar, the Talati has drawn the Panchnama after handing over the possession to the respondent. It was further submitted that the order under Section 32P of the Act was legally passed by the Mamlatdar as provided by the provisions of the Mamlatdar Courts Act and thereafter an entry was also made being Entry No. 7926 dated 20th February 1969 in Village Form No.6, notifying the fact that the order under Sec. 32 was executed and the possession was given to the concerned authority in the presence of the persons who has handed over the possession. The said Entry was also duly certified by the Mamlatdar and thereafter the name of the owner was inserted in the Village Form No. 7, 7A and 12 from the year 1964-65 onwards. The said name of the land owner was continued till they have disposed of the property in the year 1983-84 and from 1983-84 onwards the name of the purchaser is shown in the revenue record till the date of filing of the affidavit-in-reply by the respondent. It is therefore contended that the land was not at the disposal of the Collector for the year 1981-82 when the heirs of the tenant, i.e. the present petitioners made an application to get the land under Section 32PP of the Act.

10. It was further submitted that the order of the Mamlatdar passed under Section 32P of the Act was never challenged by the petitioners and after about 18 years, the present petitioners have made an application before the Mamlatdar under Sec. 32PP of the Act in the year 1982 and they have also moved an application under Sec. 70(nb) of the Act praying for the relief that he was in possession of the land and his possession should be protected. In the said proceedings, the Mamlatdar & ALT had disposed of the said application filed under Sec. 70(nb) of the Act on 17.1.83 and held that the petitioners were not in possession and therefore not entitled to get any injunction under the said Section.

As stated earlier, the Mamlatdar & ALT has thereafter finally disposed of the application filed under Sec. 32PP of the Act on 20th July 1983. It was further contended that after the period of appeal was over the land in question was purchased by 3 different sale deeds dated 27.8.83, 9.9.83 and 29.9.83.

11. It was further submitted by the respondent that even though the present petitioners were aware about the said order, they had not taken any steps to file an appeal. It was however alleged that at the instance of somebody else they preferred an appeal being Appeal No. 167/90 before the Deputy Collector on 4.6.1990. In other words, the said Appeal was filed after a period of about more than 7 years without making any application for condonation of delay or without filing an affidavit or any document for condonation of delay. The Deputy Collector, even though the appeal was time-barred, had heard the appeal on merits and dismissed the said appeal vide his order and judgment dated 20th March 1991 and thereafter the said order and judgment was confirmed by the Gujarat Revenue Tribunal while exercising the revisional jurisdiction conferred under Section 76 of the Act.

12. It was further contended that the predecessors who are the owners and occupants of the land in question had also applied for converting the land for nonagricultural purposes and the District Development Officer, while exercising his powers under Sec. 65 of the Bombay Land Revenue Code, granted permission to the concerned respondent for nonagricultural purposes.

13. The respondents have also raised a legal issue before the Court stating that order under Sec. 32P was passed on 1-8-1963 while Section 32P was introduced by the Legislature by Gujarat Act No. 36 of 1965 which came into force on 29.12.1965. By the said Section for the first time, a right was given to the tenant who has shown his unwillingness to purchase the land provided the land had not been disposed of by the Collector under Section 32P of the Act. In the present case, as stated earlier, the Mamlatdar, while exercising the power of the Collector under Sec. 32P of the Act after holding inquiry, disposed of the land by order dated 1-8-63 by which the land was given for personal cultivation to the landlady and the tenancy of the tenant was terminated. Thereafter, the said order was duly executed and the possession was handed over to the landlady after following due procedure of law. Hence, when the present petitioners had made application under Section 32PP of

the Act to get the land in the year 1982, the land was not at the disposal of the Collector as provided by Section 80PP of the Act. The petitioners were therefore not entitled to get the land as the land was already disposed of and the possession was already given to the landlady in accordance with law.

14. The respondents have further raised the contention that the landlady has got the possession of the land in question in the year 1963 and at that time as there was no prohibition or any restraint on the transfer of the property in favour of any other person, the said restraint was in the form of sub-sections (6) to (9) of Section 32P of the Act. However, the said sub-sections have come into force by Gujarat Act 36 of 1965. Before that, the landlady had already taken the possession and hence she was entitled to dispose of her property in accordance with law.

15. On the basis of the aforesaid submissions, it was urged before the Court that the orders passed by the authorities below are in accordance with the provisions of law and no interference should be called for by this Court while exercising writ jurisdiction under Art. 227 of the Constitution.

16. Heard Mr. AJ Patel with Ms. Zankhna Bhatt, learned advocates appearing for the petitioners and Mr. JM Patel, learned advocate appearing for the respondents. They have reiterated their respective submissions made before the authorities below as well as in the present petition and affidavit-in-reply respectively. After having heard the ld. advocates appearing for the respective parties and after having gone through the contents of the petition as well as the affidavit-in-reply as well as the documentary evidence attached therewith, I am of the view that the orders passed by the authorities below need not require any interference by this Court. It is an admitted position that all the three authorities have taken the concurrent view and based on the evidence and documents on record, they have arrived at a concurrent finding of fact which cannot be said to be perverse or unreasonable in any manner and the scope of the writ jurisdiction of this Court being very limited under Art. 227 of the Constitution, the said finding does not warrant any interference by this Court. As observed earlier, the order was passed way back in 1962 under Sec. 32G of the Act and the possession under Sec. 32P was given to the landlady. Pursuant thereto, necessary entries were made in the revenue records. Though the petitioners or their

predecessor-in-title were parties to the said proceedings, the same were not challenged before any authority. Even when the application was moved under Sec. 32PP of the Act, and interim application seeking protection of the possession was made and the order was passed under Sec. 70(nb) of the Act rejecting the said application, the same was not challenged before any authority. It is also an admitted position that after the possession was given to the landlady the land in question was transferred by registered Sale Deeds dated 27.8.83, 9.9.83 and 29.9.83 in favour of the predecessors and those predecessors have also converted their land for nonagricultural purposes. The title was already changed. The petitioners were never in possession of the land in question since 1963 and even after losing before the Mamlatdar and ALT they have not preferred any appeal for 7 years. Though the appeal was admittedly barred by limitation, the Deputy Collector has entertained the said appeal and decided it on merits against the petitioners. The Gujarat Land Revenue Tribunal has also decided the revision against the petitioners. At no stage, the petitioners have succeeded in their endeavour to get the possession of the land in question and before this Court also they are not in a position to establish their case and hence ultimately they meet with the same fate as was the case before the lower authorities. There are enough constraints on the Court's power to be exercised under Art. 227 of the Constitution of India. The Division Bench of this Court has held in the case of Chhagan Ranchod Kulkavva vs. General Manager, Western Railway, Bombay & Anr. - 1998 (1) G.L.H. 461, as under:-

"An order passed by the Tribunal can be challenged under Arts. 226/227 of the Constitution of India only if there is any jurisdictional error or procedural error apparent on the face of the record. It was observed by the Supreme Court in Mohd. Yunus v. Mohd. Mustaqim and Ors. reported in AIR 1984 Supreme Court 38 that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution of India is limited to seeing that an interior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the facts of the record much less an error of law. In exercising the supervisory power under Art. 227 the High Court does not act

as an Appellate Court of Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision."

The Hon'ble Supreme Court has also held in *Essen Deinki vs. Rajiv Kumar* - (2002) 8 SCC 400, as under:

"Exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

It is clear that error must be that of law and patently on record committed by the inferior tribunal so as to warrant intervention - it ought not to act as a court of appeal."

17. Taking overall view of the matter, and considering the facts and circumstances of the case as well as the settled legal position, I am of the view that there is no merit or substance in the matter and hence the petition is dismissed. The interim relief granted earlier is vacated. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]